

## **REMARKS/ARGUMENTS**

### **1.) Claim Amendments**

The Applicant has amended claims 35-36, 39-40 and 42; claims 1-21, 27-34, have been canceled. Applicant respectfully submits no new matter has been added. Accordingly, claims 22-26, 35-42 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

### **2.) Examiner Objections - Claims**

Claim 42 were objected to because of informalities. The Applicant appreciates the Examiner's thorough review of the claims. The Applicant has amended the claim as suggested by the Examiner in order to correct the informalities. The Examiner's consideration of the amended claim is respectfully requested.

### **3.) Claim Rejections – 35 U.S.C. §101**

The Examiner rejected claims 27-34 on the asserted basis that those claims are directed to non-statutory subject matter. In order to expedite the allowance of the pending claims, the Applicant has cancelled Claims 27-34 without any prejudice.

### **4.) Claim Rejections – 35 U.S.C. § 112**

Claims 31, 36, 39, 40 and 42 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter as the invention. The Applicant once again appreciates the Examiner's thorough review of the pending claims and has amended the claims accordingly to overcome the rejections. A favorable reconsideration is earnestly requested.

### **5.) Claim Rejections – 35 U.S.C. § 102(e)**

Claims 22-24, 26-28, 31 and 33-35 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Mizell, *et al.* (US 2004/0266394). The Applicant respectfully

traverses the Examiner's rejection and offers the following remarks for the Examiner's favorable reconsideration.

The Mizell reference indeed discloses an invention for providing content based charging information within a packet based communication network using a gateway GPRS service node (GGSN) in a GPRS or UMTS based network. However, the Applicant respectfully submits that the Mizell invention provides a different solution than the present invention as claimed. In accordance with the teachings of the present invention, after identifying a particular PDP context for a particular mobile station, the gateway node (such as the GGSN) gathers certain charging information related to the identified PDP context. As further recited in independent Claim 22, such charging information identifies service class information pertaining to at least one IP packet payload for that PDP context. The service class information is then included into a pre-determined service class extension header and transmitted from the gateway node (such as the GGSN) to a serving node (such as the SGSN). On the other hand, in Mizell, the GGSN does not provide any such service class information to the SGSN. Instead, in Mizell, the GGSN actually inspects the packets for content, source, and destination addresses and then based on certain partnership agreements between the network operator and the content service provider, determines the appropriate charging rate against which the packet should be counted. This charging rate is then included into a GTP packet and provided to the SGSN (Mizell, Fig. 2, Para 30). However, since the GGSN in Mizell is responsible for packet content inspection but has no way of knowing if the packet has actually delivered, the SGSN will instead keep track of the successfully delivered packets and report the delivered volume to the charging entity. The volume counts therefore reported by the GGSN and SGSN will then be reconciled by the CFG to determine how many packets were actually delivered successfully to the mobile station and to adjust charges to the appropriate rate buckets (Mizell, Fig. 2, para 31).

Therefore, the present invention is distinguishable from the Mizell invention since Mizell fails to show a gateway node "gathering charging information related to said PDP context" wherein such charging information includes service class information pertaining

to at least one IP packet payload for the PDP context. Instead, the Mizell invention actually inspects the contents of the packets and provides the SGSN with actual charging rate to be applied for those contents. The present invention, on the other hand, identifies appropriate service class information for at least one IP packet payload associated with that PDP context and communicates that service class information to be later used by SGSN and SCP for determining an appropriate charging rate. Since Mizell fails to disclose or teach the steps of determining and transmitting such “service class information” from a gateway node to a serving node using a service class extension header, the Applicant submits that independent Claims 22 and 35 and their dependent claims (23-24, and 26) are allowable over the cited reference. Claims 27, 28, 31, and 33-34 have been cancelled without any prejudice as further remarked above.

**6.) Claim Rejections – 35 U.S.C. § 103 (a)**

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizell in view of Bos, *et al.* (US 2002/0058496). The Applicant submits that Claim 25 is dependent on now allowable independent Claim 22 and recites additional limitations thereto. Therefore, Claim 25 is also in condition for allowance.

Claims 29-30, 32, 36-38 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizell in view of Lundin, *et al.* (US 2008/0096523). Claims 20-30 and 32 have been cancelled without prejudice.

With respect to Lundin, the Applicant respectfully submits that Lundin is **disqualified as prior art reference pursuant to 35 USC 103(c)(1)** wherein it states that:

Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Since Ericsson Inc (Assignee of the Lundin application, Reel;023529 Frame; 0958)

is a wholly owned subsidiary of Telefonaktiebolaget LM Ericsson (publ) (Assignee of the present application) at the time of the claimed inventions, pursuant to MPEP 706.02(I)(2), the Lundin reference is disqualified as prior art and cannot preclude the patentability of the present invention.

Additionally, with respect to independent Claims 36 and 37, the Applicant submits that Mizell likewise fails to disclose a serving node with means for receiving a packet data unit comprising a service class extension header, means for determining a service class value from the received service class extension header, further determining the volume count and means for sending the determined service class value and the volume count to the charging node. In Mizell, instead of receiving a service class value within a service class extension header, as further described above, it receives a charging rate for the received contents. The Applicant submits that receiving a class value is different than receiving a charging rate as determined by the gateway node.

The Applicant therefore submits that independent Claim 36 is allowable over the cited references. For similar reasons, independent Claim 37 and its dependent claims (38-40) are further in condition for allowance. For at least the reasons as set forth above, independent Claim 41 is also in condition for allowance.

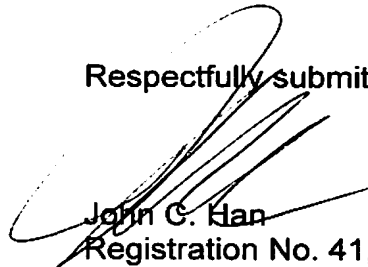
Claim 42 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizell in view of Lundin and further in view of US/2003/0120499 to MacLean et al. As described above, Lundin is disqualified as prior art for the present application. Mizell fails to disclose or teach the means for determining a "service class of the payload data of the IP data packet associated with the PDP context" and then generating service class extension headers containing the determined service class. Lastly, MacLean similarly fails to anticipate or render obvious each and every limitation of independent Claim 42. As a result, Claim 42 is also in condition for allowance.

### **CONCLUSION**

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



John C. Han  
Registration No. 41,403

Date: November 19, 2009

Ericsson Inc.  
6300 Legacy Drive, M/S EVR 1-C-11  
Plano, Texas 75024

(972) 583-7686  
john.han@ericsson.com